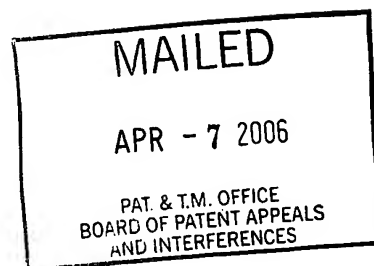


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GINA SPARACINO

Application No. 10/723,000



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on January 18, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed April 25, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I)

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through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed April 25, 2005:

1) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental appeal brief that is in compliance with the headings as set forth under 37 CFR § 41.37 are required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

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Also, the examiner's answer mailed on July 20, 2005 is not in compliance with the requirements of 37 CFR § 41.37. The following heading needs to be provided in order to be consistent with the appeal brief filed on April 25, 2005:

Evidence Relied Upon - listing the evidence relied on (e.g., patents, publications etc.).

Before further review, the examiner must submit a corrected examiner's answer that will include the Evidence Relied Upon section containing the list of references mentioned in the statement of rejections. Appropriate correction is required.

Accordingly, it is


ORDERED that this application be returned to the examiner for: 1) hold the appeal brief of April 25, 2005 defective; 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37 or to submit a statement from the examiner regarding the position taken on the missing appendix (i.e., Related Proceedings); 3) consider the supplemental appeal brief; 4) vacate the examiner's answer mailed

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July 20, 2005, and issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section, paragraph; and 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


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